

ORIGINAL

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

L. T. TUCKER, #132271  
PLAINTIFF,

CASE NO. 2:19-CV-175  
HON. HALA Y. JARBOU  
MAG. MAARTEN VERMAAT

V.  
D. CONNOR,  
DEFENDANT.

**FILED - MQ**

November 17, 2021 12:25 PM

CLERK OF COURT  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

BY: mlc SCANNED BY: mlc

PLAINTIFF OBJECTIONS TO THE REPORT AND RECOMMENDATION  
WITH EXHIBITS

NOW COMES PLAINTIFF L. T. TUCKER JR, PROSE AND PURSUANT TO TITLE 28 U.S.C. § 636 (b), (1), (c); FED. R. CIV. P. 72 (b), AND W.D. Mich. L CIVIL 72.3 (b), AND FILE THESE TIMELY OBJECTIONS.

PURSUANT TO FED. R. CIV. P. 10 (c) PLAINTIFF ALSO JOIN, ADOPTS AND INCORPORATE BY REFERENCE PLAINTIFF PROSE COMPLAINT (ECF No. 1); WITH EXHIBITS. PLAINTIFF MOTION FOR SUMMARY JUDGMENT WITH EXHIBITS AND AFFIDAVITS. (ECF No. ~~123~~ 123), THE COURT (ECF No. 96-REPORT AND RECOMMENDATION- DATED JULY 24, 2020). DEFENDANT MOTION FOR SUMMARY JUDGMENT AND (ECF. 126-127) AND DEFENDANT RESPONSE TO PLAINTIFF MOTION FOR SUMMARY JUDGMENT, (ECF. No. 128) AND PLAINTIFF EXHIBITS AND AFFIDAVITS A TRICK TO PLAINTIFF MOTION FOR LEAVE TO FILE A SUR-REPLY TO DEFENDANT MOTION FOR ~~128~~ SUMMARY JUDGMENT. (ECF No. 129). AND PLAINTIFF REQUEST TO SUPPLEMENT THE RECORD.

OBJECTIONS NUMBER ONE TO THE RTR:



PLAINTIFF TUCKER. THE COURT'S FAILURE TO CONSTRUCT PLAINTIFF TUCKER PIERING LIBERALLY, AND DEFERRED TO LESS STRINGENT STANDARDS THAN FORMAL PAPER DRAFTED BY A LAWYER, HAINES V. KERNER, 404 U.S. 519, 520 (1972). FURTHER THE RTA FAILURE TO CONSTRUCT PLAINTIFF TUCKER'S PRE-SE COMPLAINT (ECF NO. 1). AFFIDAVITS, EXHIBITS, DEFENDANT D. CONNOR, RESPONSES TO ADMISSIONS, INTERROGATORIES AND OTHER "ADMISSIBLE EVIDENCE" IN SUPPORT OF PLAINTIFF TUCKER RETALIATION CLAIM. SEE (ECF NO. 123).

THE RTA. "ERRONEOUSLY" OVERLOOK ITS PREVIOUS FINDING OF FACTS WHEN THE COURT ALREADY FOUND THAT SHE THREAT TO WRITE A GRIEVANCE ON DEFENDANT D. CONNOR WAS PROTECTED CONDUCT AS A MATTER OF LAW. SEE RTA. OF JULY 24, 2020. PAGE. 17-18.

SHE COURT OVERLOOK THE MOST CONTROLLING AND APPROPRIATE AUTHORITY MADEN V. STEVEN, 887 F.3d 252 (6th Cir. 2018). MAKE IT CLEAR THAT PLAINTIFF TUCKER THREATS TO FILE A GRIEVANCE. WAS NEVER TREATED AS BEING "FRIVOLOUS" UNDER DEFENDANT D. CONNOR. OWN POLICY DIRECTIVE PD. 03.02.130. SEE EXHIBIT-A-E.

AT NO TIME AT STEP I, II, III, WAS PLAINTIFF TUCKER GRIEVANCE RULE TO BE "FRIVOLOUS" WHEN PLAINTIFF TUCKER WAS ONLY DOING WHAT WAS REQUIRE OF HER PURSUANT TO DEFENDANT D. CONNOR OWN ~~THE~~ POLICY DIRECTIVE PD. 03.02.130. Q. SEE EXHIBIT-A, HEREIN



ON MAY 14, 2019, PLAINTIFF TUCKER WAS ENGAGED IN PROTECTED CONDUCT AS A MATTER OF LAW SEE EXHIBIT-F. VIOLETT V. REYNOLDS, 76 F. APP'X 24, 27 (CSA CIR. 2003). ("filing grievances through the inmate grievance mechanism is PROTECTED CONDUCT").

THE RTR ANALYSIS ADOPTED AN "CHECKMATE DOCTRINE" PROVIDED THAT WHEN A DEFENDANT CLAIMS A PRISONER GRIEVANCE IS "FRIVOLOUS" OUTSIDE OF THE GRIEVANCE PROCEDURE, ESSENTIALLY CHECKMATES THE RETALIATION CLAIM. FIRST OFF DEFENDANT D. CONNOR, NEVER, ARGUES IN RESPONSE TO PLAINTIFF TUCKER GRIEVANCE THAT THE GRIEVANCE WAS "FRIVOLOUS" SEE EXHIBITS F. FOR THE RTR TO ALLOW DEFENDANT D. CONNOR TO ARGUE FOR THE FIRST TIME THAT THE GRIEVANCE IS "FRIVOLOUS" AND ESSENTIALLY CHECKMATES THE PLAINTIFF TUCKER RETALIATION ~~CLAIM~~ CLAIM OF RETALIATION. WOULD BE AD-ITTING A "CHECKMATE DOCTRINE." SEE EXHIBIT-F.

"ANALOGUE" TO AN EXHAUSTION QUESTION, WHERE A PRISONER AFFIDAVIT THAT RAISED THE ISSUE OF RETALIATION AT A MISCONDUCT HEARING BECAUSE THAT WAS PLAINTIFF TUCKER ONLY WAY OF "CHALLENGING" THE ISSUE OF RETALIATION. SEE HEARING REPORT OF JULY 16, 2019, AS EXHIBITS-B-D, AS WELL AS THE DEFENSE OF RETALIATION THAT WAS RAISED IN THE PLAINTIFF TUCKER "DECLARATION" SEE EXHIBITS-A-D.



THE RTR. FAILED, HOWEVER TO CONSIDER WHETHER TUCKER AFFIDAVITS WHICH WAS FILED IN SUPPORT OF HIS COMPLAINT WAS PROPERLY VERIFIED. PLAINTIFF F. TUCKER AFFIDAVITS WERE NOT NOTARIZED BUT WAS SIGNED AND DATED UNDER THE FOLLOWING STATEMENTS "I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT." A STATUTORY EXCEPTION TO THIS RULE EXISTS WHICH PERMITS AN UNSWORN DECLARATION TO SUBSTITUTE FOR A CONVENTIONAL AFFIDAVIT IF THE STATEMENT CONTAINED IN THE DECLARATION IS MADE UNDER PENALTY OF PERJURY. CERTIFIED AS TRUE AND CORRECT DATED, AND SIGNED. *Pollock v. Pollock*, 154 F.3d 801, 611 N.2d (6th Cir. 1998) (CITATION OMITTED). (CITING 28 U.S.C. § 1746). THE DISTRICT COURT THEREFORE ERRED IN FAILING TO CONSIDER TUCKER AFFIDAVITS AS WELL AS HIS WITNESS AFFIDAVITS IN RESPONSE TO D. CONNOR MOTION FOR SUMMARY JUDGMENT. SEE EXHIBITS

TUCKER ALSO ATTACHED THESE DOCUMENTS TO HIS MOTION FOR SUMMARY JUDGMENT (ECF NO. 123). THE GRIEVANCES AND THE MISCONDUCT REPORT AND HEARING REPORT. THESE DOCUMENTS WERE INDISPUTABLY PART OF THE RECORD AND RIFE FOR CONSIDERATION. SEE FED. R. CIV. P. 50(c)(3). EXHIBITS A-K.

DEFENDANT D. CONNOR, IS TRYING TO CIRCUMVENT THE LAW BY ARGUING A NEW RULE OF LAW THAT IS CONTRARY TO THE PRECEDENT OF THIS CIRCUIT. MAJEN U



SHIELEN SUPRA, THE RTA ERRONEOUSLY RELIED UPON "CONTESTED ISSUES OF FACTS THAT TURN ON 'CREDIBILITY DETERMINATION'. THE WEIGHING OF EVIDENCE, AND THE DRAWING OF LEGITIMATE INFERENCES FROM THE FACTS ARE JURY FUNCTIONS, NOT THOSE OF THE JUDGE, WHETHER HE IS RULING ON A MOTION FOR SUMMARY JUDGMENT OR FOR A DIRECTED VERDICT.

PLAINTIFF TUCKER "AFFIDAVIT" ATTACH 50 (ECF NO. 123). PRECLUDED A SHOWING THAT DEFENDANT D. CONNOR WOULD HAVE TAKEN THE SAME ACTION IF PLAINTIFF TUCKER HAD NOT ENGAGE IN PROTECTED FIRST AMENDMENT ~~CONDUCT~~ CONDUCT. MADEN V. SHIELEN SUPRA.

THE RTA FINDING ARE "ERRONEOUSLY" IN LIGHT OF ALL THE "ADMISSIBLE EVIDENCE" ATTACH 50 (ECF NO. 123- PLAINTIFF MOTION FOR SUMMARY JUDGMENT. EXHIBITS - 6-21, THAT DEMONSTRATE THAT DEFENDANT D. CONNOR, C/O DONALD MANKEE, AND SERGEANT NICOLE KAUFZ. FAIL TO CARRY OUT THEIR JOB DUTY THAT ARE "MANDATED" IN PLAINTIFF EXHIBITS 6-21, AND THAT DEFENDANT D. CONNOR, C/O DONALD MANKEE AND SGT. NICOLE KAUFZ NEVER SAW NO RESIDUE IN THE CUR... AND HAD



IF THIS WAS THE CASE, OFFENDANT D. CUNNOR WOULD HAVE BEEN REQUIRED TO "SEIZE" ANY PHYSICAL EVIDENCE WHICH WAS INVOLVED IN THE MISCONDUCT. SEE (ECF NO. 123) EXHIBITS- 6-10, 12-14-21. A-D.

FURTHER, MORE. SERGEANT NICOLE KANTZ, WAS A DEFENDANT IN THIS CASE. AND WAS THE REVIEWING OFFICER ON THIS MISCONDUCT REPORT ON JULY 10, 2019. SEE EXHIBITS- B, C, D, 6-21. HEREIN.

AND THAT THE "SELF SERVING" CLAIMS OF THE ABOVE STATE WAS FALSE. THERE WAS NO RESIDE IN THE CUP. SEE EXHIBIT. A. HEREIN (ECF NO. 123). EXHIBIT-1.

### OBJECTION NUMBER THREE TO THE RTA:

PLAINTIFF SUCKER OBJECTS TO THE RTA, "ERRONEOUSLY" CONSIDERATION OF INADMISSIBLE EVIDENCE (HEARSAY). FOR THE PURPOSE OF SUMMARY JUDGMENT ON THE FOLLOWING GROUNDS: "WHEN AN AFFIDAVIT IS SUBMITTED IN SUPPORT OR IN OPPOSITION TO A MOTION FOR ~~FOR~~ SUMMARY JUDGMENT, CONTAINS INADMISSIBLE PORTIONS OF THE AFFIDAVIT WAS NOT MADE ON PERSONAL ~~KNOWLEDGE~~ KNOWLEDGE AND SET OUT FACTS THAT WOULD BE ADMISSIBLE IN EVIDENCE AND SHOW THAT ~~THE~~ THE AFFIANT OR DECLARANT IS COMPETENT TO TESTIFY ON THE MATTER STATED. PURSUANT TO FED. R. CIV. P. 56 (4) (b) 1. DEFENDANT D. CUNNOR, AFFIDAVIT



AT (ECF NO. 127-3, PAGE ID. 983) AT PARASRAMA. IS INADMISSIBLE HEARSAY EVIDENCE, BECAUSE THE GRIEVANCE IN QUESTION WAS NEVER REFLECTED AS BEING "FRIVOLOUS" - SEE EXHIBIT A, (ECF NO. 137, PAGE ID 1092, RTR.) AND (ECF NO. 96, PAGE 12-18.

C/O ~~MANKEE~~ MANKEE, AFFIDAVIT (ECF NO. 137, PAGE ID 1091, PARAGRAPHS 8, 9, IS NOT BASED ON PERSONALLY KNOWLEDGE AND DOES NOT SET OUT FACTS THAT WOULD BE ADMISSIBLE IN EVIDENCE AND SHOW THAT THE AFFIANT C/O MANKEE, IS COMPETENT TO TESTIFY ON THE MATTER STATED.

1. C/O MANKEE WAS NOT WITH DEFENDANT D. CONNOR, ON 7-10-2019, AT THE TIME DEFENDANT A. CONNER, GAVE PLAINTIFF TUCKER, THE CUP OF WATER AT 20:45 HOURS. SEE EXHIBIT B, AND (ECF NO. 1.) PRO SE COMPLAINT. ALSO EXHIBITS F-G, H, I, J.

2. C/O MANKEE, NEVER WITNESS DEFENDANT D. CONNOR. DISPENSE THE PILL MEDICATION AND DISSOLVED IT IN WATER AND THEN GAVE IT TO PLAINTIFF TUCKER. ON 7-10-2019.

EXHIBIT B, SHOW THAT C/O MANKEE WAS CALLED DOWN TO PLAINTIFF TUCKER CELL AFTER PLAINTIFF WAS FIRST GAVE THE CUP <sup>OF</sup> WATER.

OBJECTION NUMBER FOUR TO THE RTR

PLAINTIFF SUCKER OBJECTS- THE RTR. ON THE QUESTION OF THE COURT FACTUAL FINDING FOR THE RETALIATORY FALSE MISCONDUCT REPEAL CLAIM. THE RTR. PAGE 20. 137. FOOTNOTE\*2. (ECF No. 137).

THE RTR. (ECF No. 96.) SHOW THAT RETALIATION IS IMPLICIT IN THE TICKET. SEE EXHIBITS B-C, E, J. (ECF No. 123-124).

REQUESTED RELIEF

WHEREFORE PLAINTIFF SUCKER REQUEST RESPECTFULLY THAT THIS HONORABLE COURT OVERRULE THE RTR. AND SET THIS MATTER <sup>FOR</sup> FURTHER PROCEEDINGS ON PLAINTIFF SUCKER RETALIATORY FALSE MISCONDUCT CLAIM OF RETALIATION.

RESPECTFULLY SUBMITTED  
 L.S. JAMES 1/3227/

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DATED: 11-8-2021.



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